

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LENIER AYERS,

Petitioner,

V.

SUSAN DREYFUS,

Respondent.

CASE NO. C09-5104 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

The Magistrate Judge recommends that Respondents motion to dismiss this petition for writ of habeas corpus be granted and the petition be dismissed for failure to exhaust state court remedies. The Petitioner has responded to the Report and Recommendation requesting the Court stay the proceedings and appoint counsel for Petitioner.

As detailed by the Report and Recommendation, Petitioner has pending in the state courts a personal restraint petition and motion for relief from judgment that contain the same issues as raised in this habeas petition. Accordingly, Petitioner has not exhausted the claims he is making in the instant petition and they must be denied. The request for a stay and appointment of counsel are meritless.

1 The Court, having reviewed the petition, the Report and Recommendation of the Hon. J.
2 Richard Creatura, United States Magistrate Judge, the objections to the Report and
3 Recommendation, and the remaining record, does hereby find and Order:

4 (1) The Court adopts the Report and Recommendation;
5 (2) Respondent's motion to dismiss is GRANTED;
6 (3) The petition for writ of habeas corpus is DENIED; and
7 (4) The Clerk is directed to send copies of this Order to Petitioner and to counsel for
8 Respondent.

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10 DATED this 14th day of January, 2010.

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13 FRANKLIN D. BURGESS
14 UNITED STATES DISTRICT JUDGE
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